

House Bill 365

By: Representatives Jerguson of the 22nd, Wix of the 33rd, Casas of the 103rd, and Hill of the 21st

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to authorize the imposition of a local option sales and use tax for transportation projects and costs within special districts; to establish special districts; to provide for procedures, conditions, and limitations for the imposition, collection, disbursement, and termination of the tax; to provide for powers, duties, and authority of the state revenue commissioner; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by adding a new article to read as follows:

"ARTICLE 5

48-8-230.

As used in this article, the term:

(1) 'Cost of project' or 'project costs' means the cost of construction, including without limitation relocation or adjustments of utilities; the cost of all lands, properties, rights, easements, and franchises acquired; relocation expenses; the cost of all machinery and equipment necessary for the operation of the project, the cost of engineering, legal expenses, plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incident to the construction of any project, the placing of the same in operation, or the maintenance and operation of the same.

(2) 'Dealer' means a dealer as defined in paragraph (3) of Code Section 48-8-2.

(3) 'Project' means existing or future land public transportation systems, including without limitation: (A) one or more roads or bridges or a system of roads, bridges, and tunnels or maintenance and operations thereof, with access limited or unlimited, and such buildings, structures, parking areas, appurtenances, and facilities related thereto, including but not limited to approaches, cross streets, roads, bridges, tunnels, and avenues of access for such system; and (B) any program for mass public transportation or mass public transportation facilities or maintenance and operations thereof and such buildings, structures, parking areas, appurtenances, and facilities related thereto, including but not limited to approaches, cross streets, roads, bridges, tunnels, and avenues of access for such facilities.

48-8-231.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this article within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this article, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county transportation projects and costs local option sales tax.

(c) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to sales of motor fuels as that term is defined by Code Section 48-9-2 and shall be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3.

(d) No sales and use tax shall be levied in a special district under this article in which a tax is levied and collected under Article 2 of this chapter.

48-8-232.

(a) Prior to the vote of a county governing authority to impose the tax under this article, such governing authority shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the county. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and

of each municipality are to meet to discuss the proposed tax levy. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum. Following such meeting, a county governing authority voting to impose the tax authorized by this article shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify the transportation projects and costs for which the proceeds of the tax are to be used and may be expended and specify:

(1) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years;

(2) The maximum cost of the transportation projects and costs which will be funded from the proceeds of the tax, which maximum cost shall also be the maximum amount of net proceeds to be raised by the tax; and

(3) If general obligation debt is to be issued in conjunction with the imposition of the tax, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the county. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. If general obligation debt is to be issued in conjunction with the imposition of the tax, the notice published by the election superintendent shall also include, in such form as may be specified by the county governing authority, the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) If the tax is to be imposed and if no debt is to be issued, the ballot shall have written or printed thereon the following:

'() YES Shall a special 1 percent sales and use tax be imposed in _____
County for a period of time not to exceed _____ and for the
() NO raising of not more than \$ _____ for the following transportation
projects and costs: _____ ?'

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

'If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ County in the principal amount of \$ _____ for the above purpose.'

(d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in favor of imposing the tax then the tax shall be imposed as provided in this article; otherwise the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the county until after 12 months immediately following the month in which the election was held. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the county; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this article. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county from the tax authorized by this article. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the county.

48-8-233.

With respect to any consolidated government created by the consolidation of a county and one or more municipalities, the levy of a tax under this article by a consolidated government shall be in the same manner as the levy of the tax by any other county.

48-8-234.

(a) If the imposition of the tax is approved at the special election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters. With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the county net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) No county shall impose at any time more than a single 1 percent tax under this article.

(2) A county in which a tax authorized by this article is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized by this article upon the termination of the tax then in effect; and a special election may be held for this purpose while the tax is in effect. Proceedings for the reimposition of a tax shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a county is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the

reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this article, a county may initiate proceedings for the reimposition of a tax under this article in the same manner as provided in this article for initial imposition of such tax.

48-8-235.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the county imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

48-8-236.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale.

48-8-237.

The proceeds of the tax collected by the commissioner in each county under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed to the governing authority of the county imposing the tax.

48-8-238.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, and then against the tax levied under this article.

48-8-239.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Interstate Commerce Commission or the Georgia Public Service Commission.

48-8-240.

(a) As used in this Code section, the term 'building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the

234 contract was entered into as a result of a bid actually submitted in response to the
235 advertisement prior to approval of the levy of the tax.

236 48-8-241.

237 The commissioner shall have the power and authority to promulgate such rules and
238 regulations as shall be necessary for the effective and efficient administration and
239 enforcement of the collection of the tax authorized to be imposed by this article.

240 48-8-242.

241 Except as provided in Code Section 48-8-6, the tax authorized by this article shall be in
242 addition to any other local sales and use tax. Except as provided in Code Section 48-8-6,
243 the imposition of any other local sales and use tax within a county shall not affect the
244 authority of a county to impose the tax authorized by this article and the imposition of the
245 tax authorized by this article shall not affect the imposition of any otherwise authorized
246 local sales and use tax within the county.

247 48-8-243.

248 (a)(1) The proceeds received from the tax authorized by this article shall be used by the
249 county exclusively for the transportation projects and costs specified in the resolution or
250 ordinance calling for imposition of the tax. Such proceeds shall be kept in a separate
251 account from other funds of the county and shall not in any manner be commingled with
252 other funds of the county prior to the expenditure.

253 (2) The governing authority of the county and the governing authority of each
254 municipality receiving any proceeds from the tax pursuant to a contract with the county
255 shall maintain a record of each and every purpose for which the proceeds of the tax are
256 used. A schedule shall be included in each annual audit which shows for each purpose
257 in the resolution or ordinance calling for imposition of the tax the original estimated cost,
258 the current estimated cost if it is not the original estimated cost, amounts expended in
259 prior years, and amounts expended in the current year. The auditor shall verify and test
260 expenditures sufficient to provide assurances that the schedule is fairly presented in
261 relation to the financial statements. The auditor's report on the financial statements shall
262 include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly
263 in all material respects in relation to the financial statements taken as a whole.

264 (b) No general obligation debt shall be issued in conjunction with the imposition of the tax
265 authorized by this article unless the county governing authority determines that, and if the
266 debt is to be validated it is demonstrated in the validation proceedings that, during each
267 year in which any payment of principal or interest on the debt comes due the county will

receive from the tax authorized by this article net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this article shall be payable first from the separate account in which are placed the proceeds received by the county from the tax authorized by this article. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the county.

(c) The resolution or ordinance calling for imposition of the tax authorized by this article may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (f) of this Code section.

(d) The resolution or ordinance calling for the imposition of the tax authorized by this article may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the other purposes for which such proceeds will be used. In such a case no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution or ordinance calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the county receives from the tax net proceeds in excess of the maximum cost of the transportation projects and costs stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such purpose or purposes, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-233 by reason of denial of validation of debt, then all net proceeds received by the county from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the county other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the county, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes.

48-8-244.

The governing authority of the county and the governing authority of each municipality receiving any proceeds from the tax under this article shall maintain a record of each and every purpose for which the proceeds of the tax are used. Not later than December 31 of each year, the governing authority of each local government receiving any proceeds from the tax under this article shall publish annually, in a newspaper of general circulation in the boundaries of such local government, a simple, nontechnical report which shows for each purpose in the resolution or ordinance calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the local government intends to implement with respect to each purpose which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a purpose."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.